

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Docket No.

77-1217

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee

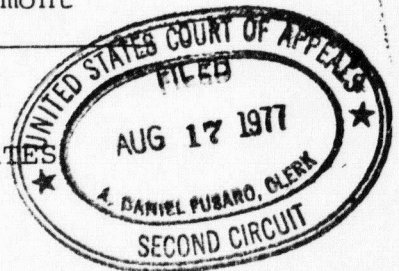
v.

DANIEL BICHARA ZOGBI

Appellant

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES



GEORGE W.F. COOK
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TABLE OF CONTENTS

	Page
Trial Transcript	1
Letter to Robert S. Bliss, Sr., Esq. dated October 12, 1976	10

A. All the time I was in their custody, I imagine so. Of course, I did; no reason to lie.

Q Let me ask you this. I thought during your direct examination testimony with respect to Barry Shane--you correct me if I am wrong--didn't Mr. Tyler ask you a question on Barry Shane, and you said that he was in illegal deals in guns?

A. No. I said they suspected him of being an illegal dealer in guns.

Q As far as you know, he is not?

A. Not as far as I know.

Q Now at all times when you have been in the custody of either the Treasury agents, or that is to say, "treasury" doesn't mean much to you. If you had been with the customs people or the Bureau of Alcohol, Tobacco & Firearms, or if you spoke with them, you always told them the truth?

A. Yes.

Q Wasn't there one particular specific occasion that you told them that you had some information, and you related which was extremely important information?

A. Yes, there was one time I made, you might say, I made a story up.

Q It was quite a story, wasn't it?

A. It was a hoax, because they kept insisting I had

information. They kept saying, "You have information," but it had nothing to do with guns. It was unrelated to guns, the supposed information.

Q But the supposed information was something you contacted them first about, didn't you?

A. That is correct.

Q You called Agent Mercier from Montreal and told him you had some specific information about something?

A. I didn't say "specific". I said information which is very important.

Q You said, "Very important information"?

A. That is correct.

Q And, you told him that you would provide him with that information in exchange for the dropping of all charges, for return of the firearms and return of the car?

A. I did not say those words. I says, "If you want to make a deal, I have some very important information. Let's get together and we can make a deal". This is after they said "If you have information, give it to us and we can make a deal".

Q Over the period of time you talked with them, did you ever tell them in exchange for this information you would give them this information, this very important information, and you described it in detail in terms of what the basics of the information was, the ultimate result, and

202
92

that in exchange for them receiving that information from you, you would give it only if all charges were dropped and the guns and parts returned, and if your car was returned?

A. When I had gotten to the point where I lost control of myself in my lawyer's office, I said "I will give you information if they drop the charges," but I did not say if the parts and car was released, I do not think. That is to the best of my recollection.

Q Did you, prior to being in the lawyer's office, ever tell Agent Mercier that?

A. If the charges were dropped?

Q You would provide the important information but only if the charges were dropped and the parts and the car was returned?

A. No, I never told him that.

Q You are positive about that?

A. I am quite sure.

Q Now you later admitted when Agent Mercier indicated to the United States Magistrate that he was going to ask for high bail based upon your having this information, you told the Magistrate that the whole thing was a hoax, didn't you?

A. No, I did not. I only told an F.B.I. agent in front of Richard Mercier it was a hoax only after they started

making threats.

Q Didn't you tell a man before whom you went for bail in St. Albans, this was a hoax?

A. I might have.

Q You did, didn't you?

A. I can't remember. You see, what happened in front of Harry Gogan from the F.B.I. and Richard Mercier, they started making threats. I did not reveal my information source, give information. They forced me to reveal my sources.

Q There weren't sources to reveal?

A. They kept asking "Who is your sources, otherwise, we'll have you detained," so I said it was a hoax then.

Q You didn't have sources to hide?

A. No.

Q It was a lie?

A. It was a hoax.

Q There wasn't a word of truth to it, was there?

A. No.

Q But, you don't recall whether or not when you came up for bail before the Magistrate, you can't recall whether or not you told him that?

A. I might have admitted it if he questioned me.

Q You might have admitted it was, in fact, a hoax?

A. Right after I admitted it to the F.B.I. agent and

Richard Mercier.

Q And, what were your conditions prior to telling them it was a hoax? What were your conditions for providing the information?

A. Like I said, I got out-of-hand and said "If you drop the charges I will give you the information".

Q You wanted this in writing?

A. I might have said that.

Q And, you wanted the return of your guns and gun parts, and all that equipment?

A. I might have said that, too.

Q And, also return of your car, right?

A. I might have said that.

Q In fact, you did say it, didn't you?

A. I can't remember for sure.

Q You could well have said it?

A. It is possible.

Q But you never told Agents DuCuennois, Mercier or Koneksi you would have their jobs?

A. I never said that.

Q You didn't say you knew the supervisor of A.T.F. in New York, and you would talk to him about their jobs about having you arrested?

A. I don't know Mr. Cryder. I only spoke to him once on the phone.

Q You used his name as a threat to Mr. DuCuennois?

A. I did not. I didn't make a threat to any of the agents.

Q You did not make that threat?

A. I perpetrated a stupid hoax in hopes of gaining a deal, because they kept offering to make a deal. So I got so frustrated I ended up doing something stupid. So I end up I told a stupid hoax.

Q It was a significant hoax?

A. A very stupid hoax.

Q It was a very significant hoax?

A. Yes.

Q Detailed a lot of wasted time and manpower?

A. Yes. I wouldn't say manpower, but it was a waste of time.

Q And, a lot of concern to the United States people to whom you told this information?

A. I guess so. I was very, very frustrated looking for any way out.

Q You were looking for any way out?

A. Not any way.

Q Isn't that what you just said?

A. Yes, but I only made that hoax because everyone kept saying "If you have information, give it to us now and we'll make a deal". Mercier said it at least three times

in the car when I was in the back seat, and Paul Du-Cuennois, in the interrogation room on the 25th, said "If you have any information, we would appreciate a call from you". When I left that day, he give me his phone number and said, "If there is any information you want to give us, here is the phone number".

Q At the point n time you started the hoax which you later admitted, nobody was talking to you or pressuring you?

A. No.

Q You were the one that called Special Agent Mercier from Montreal, and, in fact, you had to call where he was in Champlain, New York, found he wasn't there, and traced him to Montreal where they gave you the number where he was?

A. That is correct.

MR. O'NEILL. That is all we have at this time, your Honor.

THE COURT. Mr. Tyler?

MR. TYLER. No further questions, your Honor.

THE COURT. Mr. Zogbi, you may step down.

Mr. Zogbi, it seems to me, for everything under the sun in an attempt to draw your attention away from the real issue. The real issue here is a very simple one, and I brought it up at the opening--did he knowingly and willingly export without filing this form? That is all he is charged with, and please don't be drawn astray by this absolute barrage of Government witnesses and the some eighty or ninety documents brought in here by the Government. Please separate the wheat from the chaff.

This case is, basically, whether knowingly and willingly he exported without filing this form. Now for some reason here, this case has gotten blown up all out of proportion from the very beginning. Perhaps it is because they thought he was a terrorist; perhaps they just didn't like him; perhaps he is just not the type of guy that would lick their boots, but the entire / ^{weight of} the United States Government, for one reason or another, has been brought down on him for this one tiny little thing.

Now I think when I opened this case, I characterized it as shooting a mosquito with a howitzer. I think this is what it is. I think what happened, after awhile the Government didn't feel he had been a Palestinian Liberation Army man or wasn't a gangster, but by this time it is impossible for them to simply admit it and say "We made a mistake; sorry, fellow, go home". His goods are tied up; they didn't like Mr.

other thing is to show the knowledge of Mr. Zogbi; different things that may reflect knowledge; maybe they don't. You can draw some understanding from some of the things. It has some significance, not a huge amount, but you draw what amount you think it has.

As to his credibility as a witness, it is appropriate to introduce everything in evidence bearing on his credibility as he takes the witness stand. You did hear a lot of suggestion that the Government was after Mr. Zogbi because they claimed he was a terrorist, of the P.L.O. or a gangster.

Now if the Government really wanted to paint a bad picture, if I can point a phrase--get a conviction--that would be a nice thing to say, we had reason to believe he was a terrorist or member of the P.L.O. and said we had gotten information on him. We don't contend that.

MR. TYLER. If they wanted to do that, they would have to produce evidence on it. That is not a fair argument.

MR. O'NEILL. It is subject to argument by Mr. Tyler, your Honor. He opened it.

THE COURT. We'll let it stand.

MR. O'NEILL. We don't contend that. We suggest that it was an attempt to draw a smoke screen by Mr. Zogbi. Now if the Government had really thought there was all these things

United States Department of Justice

UNITED STATES ATTORNEY

DISTRICT OF VERMONT
RUTLAND, VERMONT 05701

October 12, 1976

Robert S. Bliss, Sr., Esq.
Tyler & Bruce
120 N. Main Street
St. Albans, Vermont 05478

Re: U.S. v. Zogbi
Criminal No. 76-60

Dear Bob:

Your client, Daniel R. Zogbi, made the following oral statements which the Government intends to offer in evidence at the trial. The essence of the statements are as follows:

1. On July 25, 1976, at the Port of Champlain, New York, Zogbi gave Customs Inspector Herwood Mayo a positive declaration stating that he was bringing two rifles into the United States for repairs. While in secondary inspection, Zogbi again gave a positive declaration to Customs Inspector Louis Kreiha and again stated that the weapons were being imported into the United States for repairs. Zogbi stated that he and one Byron Kennedy were on their way to Schenectady, New York to attend a gun show in hopes of finding a scope and scope mounts for a Browning assault rifle and that on July 26, 1976, he was going to return the Thompson semi-automatic weapon to the manufacture in New York City for repairs. Zogbi denied he was going to sell either weapon. During the interview, Zogbi said that he did not have a license to export, and he was not registered with the United States Department of State as an importer-exporter of firearms. He said he had never filed a shippers export declaration on any merchandise that he had exported from the United States to Canada.

Robert S. Bliss, Sr., Esq.
October 12, 1976
Page 2

2. On July 29, 1976 at Highgate Springs, Vermont; he then stated to Inspector James L. Demetrules that he and Byron Kennedy were coming from Canadian Customs stating that he had some merchandise Canadian Customs believed was commercial in nature, and therefore requiring the services of a Canadian Customs Broker to make proper entry into Canada. Zogbi explained that he had brought a defective barrel and receiver back to the manufacturer, Numrich Arms, West Hurley, New York, and exchanged it for a barrel-receiver currently in his possession. He stated he was a firearms dealer in Montreal and had purchased most of the "parts" for customers of his who had placed orders with him. Zogbi stated he is the owner of a company dealing in firearms called Firearms Sales Distributing of Montreal. Zogbi stated he had entered the United States on Sunday, July 25, 1976, at the Port of Entry, Champlain, New York, and had not declared the receiver to Customs. Zogbi further stated that he did arrive at the Champlain Port of Entry with Kennedy on Sunday, July 25, 1976, and he declared two weapons ".45 caliber Thompson and .308 match assault rifle". Zogbi stated that after being interviewed by Customs agents he returned to his residence in Montreal with Kennedy. Zogbi stated he removed the frame from the Thompson submachine gun and placed the receiver back into the trunk of his vehicle. He stated that he left the assault rifle at his residence, then proceeded with Kennedy to Champlain, New York, Port of Entry where he did not declare the receiver to Customs because he "did not want any hassles with Customs." Zogbi further stated that he purchased many other items, including magazines, clips, barrels, knives, grips, shells, etc., in the United States. He declared he did not file a shippers export declaration for the items which he stated were valued at between \$600-\$700. Zogbi related that he left the Kingston, New York area and proceeded to Canada Customs at Phillipsburg, Quebec, Canada where he returned to the United States at Highgate Springs, Vermont, after not being able to clear merchandise he was attempting to import into Canada. Zogbi further declared that he had not filed a shippers declaration (SED) per Title 22, C.F.R. 123.53 (a) when he left the United States on the evening of July 28, 1976 from Highgate Springs, Vermont.

Robert S. Bliss, Sr., Esq.
October 12, 1976
Page 3

3. Additionally, Zogbi stated to Special Agent Paul Ducuennois of the Bureau of Alcohol, Tobacco and Firearms, Plattsburgh, New York, while being transported for a bail hearing on smuggling charges in New York, that if the bail was too high, the Palestine Liberation Organization would arrange for the bail. In addition, Zogbi, in the office of his court-appointed defense counsel in Plattsburgh, New York, related that he had in his possession a keychain from the Palestine Liberation Organization.

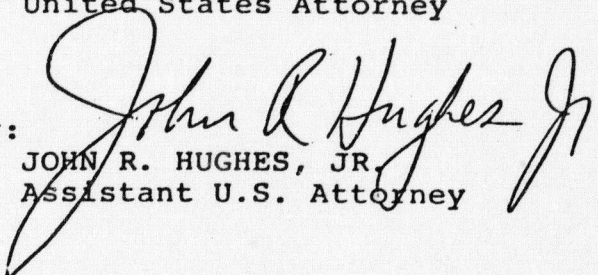
4. Also, in the course of a bail hearing on a charge in the Vermont District at St. Albans, Vermont, before U.S. Magistrate Michael McGinn, Zogbi admitted that he had perpetrated a hoax in relation to an alleged murder contract put out on a Federal agent with a view of dismissal of the New York charges against him.

If I am apprised of any more statements made by your client I will so advise you immediately. Additionally, please be advised that while the indictment charges a violation of 22 U.S.C. § 1934, this section was repealed as of June 30, 1976 by 22 U.S.C. § 2778, § 2779. This change in sections does not change the substantive part of the act and can be found in Public Law 94-329.

Very truly yours,

GEORGE W.F. COOK
United States Attorney

By:


JOHN R. HUGHES, JR.
Assistant U.S. Attorney

jrh;lm

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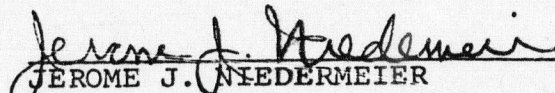
v.

Docket No. 77-1217

DANIEL BICHARA ZOGBI

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of August, 1977, mailed two copies of the attached Brief and Appendix, each, to Edward J. Tyler, III, Tyler and Bruce, 120 N. Main Street, St. Albans, Vt. 05478, postage prepaid.


JEROME J. NIEDERMEIER
Assistant U.S. Attorney